

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1973 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

AMIT ALIAS AMRUTSING AJMERSINGRAJPUT

Versus

COMMISSIONER OF POLICE AHMEDABAD

Appearance:

1. Special Civil Application No. 1973 of 2003
MR ANIL S DAVE for Petitioner No. 1
MR KAMEN N SHUKLA for Petitioner No. 1
MR KP RAVAL ld. AGP for Respondent No. 1-3
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/06/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Anil S Dave for the petitioner and Mr. KP Raval ld. AGP on behalf of the

respondents. Rule has been issued in the present petition on 28.2.2003 and made it returnable after a period of six weeks.

In the present petition, the order of detention dated 18.1.2003 passed by the Police Commissioner, Ahmedabad city under sec. 3 sub-section (2) of the Gujarat Prevention of Anti Social Activities Act, 1985, has been challenged by the petitioner on various grounds.

The present petitioner detained at Porbandar District Jail as Class-II detenu. Looking to the grounds of detention order dated 18.1.2003, one offence has been registered against the present petitioner dated 17.7.2002 under the Bombay Prohibition Act and he was arrested on 16.1.2003 in pursuance to the Crime Register No. 2292/2002 dated 17.7.2002. At the time when the order of detention was passed against the present petitioner, he was in judicial custody. The statements of the secret witnesses were recorded on 16.1.2003 and verified by the detaining authority on 17.1.2003 and, thereafter, on the next day the order of detention has been passed by the detaining authority. The two incidents has been referred in two statements of the secret witnesses dated 2.1.2003 and 29.12.2002.

Affidavit-in-reply has been filed by the detaining authority as well as the State Government which are taken on record. The copies thereof has been served to the petitioner.

Ld. advocate Mr. Anil S. Dave appearing for the petitioner has challenged the detention order on various grounds, but he raised two contentions. Firstly, that at the time of passing of the detention order, the petitioner was in judicial custody and, therefore, there is likelihood to file bail application and secondly, there is likelihood that the competent court may grant bail to the petitioner. Mr. Dave has submitted that these two aspects has not been taken into consideration by the detaining authority. He relied upon the decision of this Court in SCA No. 2866/2003 and SCA No. 2867/2003 dated 10.6.2003. In respect to the second contention, ld. Advocate Mr. Dave submitted that on 17.1.2003 the detaining authority has verified the statements and on the next day the detention order has been passed mechanically. He also submitted that the detaining authority has not verified the genuineness of the incidents whether it is real one or not and that aspect has been totally ignored by the detaining authority while passing the detention order. For that, he

relied upon the decision of this court in SCA No. 1692/99 dated 7.7.99. In short, his submission is that looking to his contention which are covered by the decision of this court, vitiates the order of detention.

Ld. AGP Mr. Raval appearing on behalf of the respondents has submitted that a detailed affidavit-in-reply has been filed by the detaining authority as well as the State Government. He submitted that whatever material has been placed on record by the Sponsoring Authority has been considered by the detaining authority while passing the order of detention. He also submitted that from record itself, the subjective satisfaction has been justified by the detaining authority and he has applied mind for passing the order of detention. The activities which has been carried out by the petitioner considering the two unregistered offence, are enough to pass the detention order against the present petitioner. He also submitted that genuineness of apprehension of the witnesses have been rightly appreciated by detaining authority. The witnesses having a reasonable fear for disclosing their names and addresses to the petitioner and, therefore, the detaining authority has rightly claimed the privilege under sec. 9 sub-section (2) of the PASA Act. Therefore, according to me, the detaining authority has rightly passed the detention order which is legal and valid and no interference is required by this Court.

I have considered the submissions made by both the learned advocates and I have also considered the decisions which have been relied upon by learned advocate Mr. Dave. All the three contentions which have been raised by Mr. Dave that at the time of passing the order of detention, the petitioner was in judicial custody is squarely covered by the decision of this Court dated 10.6.2003 as referred above. In respect to second contention that on the next day the order has been passed from the date of verification. The decision of this court reported in 2000(3) GLR p. 2696 is squarely covered and in such circumstances the court has held that the order of detention has been mechanically passed and the detention order has been quashed and set aside, and in respect of third contention that the detaining authority has not verified the genuineness of the incidents as to whether it is real or not and credibility of the witnesses and that aspect has been examined by this Court in SCA No. 1692 of 1999 dated 7.7.1999 and considering these all three judgments of this court, according to my opinion, the detention order which has been challenged by Mr. Dave is squarely covered by these

decision and order of detention is vitiated.

In the result, this petition is allowed. The impugned order of detention passed by the Police Commissioner, Ahmedabad city dated 18.1.2003 against the present petitioner is hereby quashed and set aside. The present petitioner-detenu - Amit @ Amrutsing Ajmersing Rajput who has been detained in Porbandar District Jail is released forthwith, if he is not required to be detained in any other case. Rule is made absolute with no order as to costs.

(H.K. RATHOD, J.)

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